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CHINA FREE PRESS  
(erroneously sued herein as “China Free Press  
doing business as Boxun News”)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ZHANG ZIYI, an individual,  
Plaintiff,

vs.

CHINA FREE PRESS, a North Carolina non-profit corporation doing business as BOXUN NEWS; WEICAN NULL MENG, an individual known as WATSON MENG and also WEICAN "WATSON" MENG; and DOES 1-25, inclusive,

### Defendants.

1       On October 12, 2012, Defendant CHINA FREE PRESS's ("CFP") Special  
 2 Motion To Strike Plaintiff's Complaint came on for hearing in Courtroom 7 before  
 3 the Honorable Dolly M. Gee. Having reviewed and considered the motion and all  
 4 other papers submitted and having heard the arguments of the parties, if any, **IT IS**  
 5 **HEREBY ORDERED, ADJUDGED AND DECREED THAT** CFP's Special  
 6 Motion To Strike Plaintiff's Complaint is **GRANTED** in its entirety.

7       The Court finds that:

8           Because Plaintiff's claims against CFP for libel *per se*, false light invasion of  
 9 privacy, intentional and negligent interference with prospective economic  
 10 advantage, and unlawful business practices in violation of California Business and  
 11 Professions Code Section 17200, *et seq.* arise from "conduct in furtherance of the  
 12 exercise of . . . the constitutional right of free speech in connection with a public  
 13 issue or an issue of public interest," all of the claims are subject to a special motion  
 14 to strike under California Code of Civil Procedure Section 425.16. Consequently,  
 15 Plaintiff has the burden of demonstrating a probability that she will prevail on each  
 16 of the claims she asserts. *See Cal. Code Civ. Proc. § 425.16(b)(1)*. Plaintiff has not  
 17 met her burden for each of the following separate and independent reasons:

18           1. Plaintiff's claims against CFP are barred by Section 230 of the  
 19 Communications Decency Act, 47 U.S.C. § 230, which immunizes internet service  
 20 providers from claims that seek to hold them liable as the publisher or distributor of  
 21 third party content. Section 230 requires that "(1) the defendant be a provider or  
 22 user of an interactive computer service; (2) the cause of action treats the defendant  
 23 as a publisher or speaker of information; and (3) the information at issue be  
 24 provided by another information content provider." *Gentry v. eBay, Inc.*, 99 Cal.  
 25 App. 4th 816, 830, 121 Cal. Rptr. 2d 703 (2002). CFP meets each of these  
 26 requirements:

27           a. CFP is a provider of an interactive computer service. An  
 28 "interactive computer service" is "any information service, system, or access

software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet....” 47 U.S.C. § 230(f)(2). “[C]ourts have ... adopt[ed] a relatively expansive definition of ‘interactive computer service.’” *Batzel v. Smith*, 333 F.3d 1018, 1028-30 (9th Cir. 2003). CFP is an information service that “provides or enables computer access by multiple users to a computer server.” 47 U.S.C. § 230(f)(2).

b. Plaintiff seeks to treat CFP as the publisher or speaker of content provided by a third party – here, the Boxun News website. *See* 47 U.S.C. §§ 230(c)(1), (e)(3). “[W]hat matters is not the name of the cause of action ... [but] whether [it] inherently requires the court to treat the defendant as the ‘publisher or speaker’ of content provided by another.” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009). The Complaint treats CFP as the publisher of the content in question, and seeks to hold it liable for defamation and other torts based on that content.

c. CFP is not the “information content provider” of the content in question. An “information content provider” is “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.” 47 U.S.C. § 230(f)(3). Courts have adopted a “restrictive definition of ‘information content provider.’” *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003). A service provider does not become a content provider merely by making other entities’ content available. *See, e.g., Parisi v. Sinclair*, 774 F. Supp. 2d 310, 318-21 (D.D.C. 2011) (Barnes & Noble is internet service provider, not information content provider, of book descriptions posted on website); *Chicago Lawyers’ Committee for Civil Rights Under the Law, Inc. v. Craigslist, Inc.*, 461 F. Supp. 2d 681, 698-99 (N.D. Ill.

1           2006) (Craigslist is not an information content provider of discriminatory  
 2 advertisements on its site); *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp.  
 3 2d 1090, 1117 (W.D. Wash. 2004) (Amazon is not an information content  
 4 provider of content posted by third-party vendors). Since CFP made the  
 5 content available on its servers without reviewing, selecting or editing it, CFP  
 6 is not an information content provider of that content.

7       2. Plaintiff has not established that CFP is the “alter ego” of defendant  
 8 Weican Null Meng. Although Meng is a member of CFP’s Board of Directors, such  
 9 membership alone is insufficient to establish that CFP is Meng’s alter ego.

10      3. Plaintiff has not established that CFP is the “alter ego” of Yeeka, the  
 11 owner and publisher of Boxun News. CFP has presented evidence that the two  
 12 corporations have separate accounts, books, offices, personnel, operations and  
 13 purposes, and are separately controlled and separately financed. Although Meng  
 14 serves on the board of directors for both CFP and Yeeka, this alone is insufficient to  
 15 show the presence of alter ego liability. *See, e.g., Harris Rutsky & Co. Ins. Servs.,*  
 16 *Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003); *Zero*  
 17 *Motorcycles, Inc. v. Pirelli Tyre S.p.A.*, 802 F. Supp. 2d 1078, 1094 (N.D. Cal.  
 18 2011).

19      4. Plaintiff has not proved that CFP acted with actual malice. *See New*  
 20 *York Times Co. v. Sullivan*, 376 U.S. 254, 271-72, 84 S. Ct. 710, 11 L. Ed. 2d 686  
 21 (1964). The actual malice standard is a constitutional requirement intended to  
 22 encourage “uninhibited, robust, and wide-open” debate on public issues, *id.* at 270,  
 23 and requires a public-figure plaintiff to prove that the defendant published a false  
 24 statement “with ‘knowledge that it was false or with reckless disregard of whether it  
 25 was false or not.’” *Masson v. New Yorker*, 501 U.S. 496, 510, 111 S. Ct. 2419, 115  
 26 L. Ed. 2d 447 (1991) (citation omitted). The First Amendment further requires that  
 27 a plaintiff prove actual malice by “clear and convincing” evidence. *Anderson v.*

1     1 *Liberty Lobby, Inc.*, 477 U.S. 242, 255-57, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).  
2     2 The evidence must “be such as to command the unhesitating assent of every  
3     3 reasonable mind.” *Beilenson v. Superior Court*, 44 Cal. App. 4th 944, 950, 52 Cal.  
4     4 Rptr. 2d 357 (1996). A plaintiff opposing a special motion to strike must satisfy this  
5     5 clear-and-convincing-evidence standard. *See, e.g., Rosenaur v. Scherer*, 88 Cal.  
6     6 App. 4th 260, 275-78, 105 Cal. Rptr. 2d 674 (2001); *Sipple v. Foundation For Nat.*  
7     7 *Progress*, 71 Cal. App. 4th 226, 247, 83 Cal. Rptr. 2d 677 (1999); *Bradbury v.*  
8     8 *Superior Court*, 49 Cal. App. 4th 1108, 1117, 57 Cal. Rptr. 2d 207 (1996). CFP  
9     9 provided the servers for the alleged defamatory content, without participating in the  
10     10 development of the content itself in any way. This does not amount to actual  
11     11 malice.

12 For these reasons, the Court **GRANTS** CFP's Special Motion to Strike  
13 Plaintiff's Complaint in its entirety, and enters judgment in favor of CFP and against  
14 Plaintiff. CFP is the prevailing party for purposes of recovering its attorneys' fees  
15 and costs, pursuant to California Code of Civil Procedure Section 425.16(c).

IT IS SO ORDERED.

DATED:

Hon. Dolly M. Gee  
United States District Court Judge  
For the Central District of California